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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 August 1992, at 10 a.m.

Chairman: Mr. ALFONSO MARTINEZ

later: Mr. CHERNICHENKO

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GE.92-13037 (E)

Elimination of racial discrimination:

(a) Measures to combat racism and racial discrimination and the role of the Sub-Commission

(b) Adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the racist and colonialist regime of South Africa

The meeting was called to order at 10.10 a.m.

CONTEMPORARY FORMS OF SLAVERY (agenda item 16) (continued)
(E/CN.4/Sub.2/1992/34, 35 and Add.1, 45 and 55 and Add.1)

1. Mr. MERRILLS recalled that, the previous year, the Working Group on Contemporary Forms of Slavery had proposed that the Sub-Commission should ask the Economic and Social Council to request the International Court of Justice to give an advisory opinion on the validity and the legal effect of reservations to the Convention on the Elimination of All Forms of Discrimination against Women (E/CN.4/Sub.2/1991/41, para. 166) and that the Sub-Commission had decided to defer a decision on the subject until it had consulted the Committee on the Elimination of All Forms of Discrimination against Women and the Commission on the Status of Women. In its latest report (E/CN.4/Sub.2/1992/34, p. 30), the Working Group invited the Sub-Commission to take a decision on the proposal in the light of replies from those two bodies. It would be extremely interesting to have the opinion of the International Court of Justice on reservations to the Convention, on the one hand, because that instrument was the most important piece of international legislation on protection of women, and on the other, because the Court might use the opportunity to take up again its consideration of reservations, which it had begun some 40 years earlier in connection with reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.

2. He was extremely disturbed by the information appearing in paragraphs 99 to 105 of the Working Group's report on the removal of organs from children for the purpose of commercial transplants. He was glad to see that the States mentioned in the report indicated that they were making efforts to eliminate that practice. However, if the situation was not to become even more serious, in particular under the influence of criminal organizations, effective action must be taken now. Thus the Working Group's recommendation on page 25 of the English version of its report should be given full support. If the Sub-Commission wanted the Working Group to continue to perform its work with the same effectiveness, it should ask the Secretary-General to assign it a Professional staff member of the Centre for Human Rights to work full time on a permanent basis, as recommended in the report (E/CN.4/Sub.2/1992/34, para. 117, p. 22).

3. Mrs. WARZAZI paid a tribute to the Working Group on Contemporary Forms of Slavery for the information it provided, with the help of the NGOs, on the tragic situation of women and children grappling with poverty and ignorance. Although as Mrs. Palley had stressed, slavery-like practices were especially to be found in regions where extreme poverty existed, it was nevertheless the wealthy circles that created such situations by using specialized networks to exploit that poverty shamelessly. Preventive measures such as job-creation, improvement of education and labour legislation and raising public awareness were not sufficient to combat that serious problem; the guilty parties must also be punished resolutely.

4. The problem of the exploitation of child labour was not an easy one to resolve, for it was often the poverty-stricken parents who forced their children to work, whatever the working conditions. Nevertheless, labour legislation and mechanisms for the social protection of children should be

improved and exploitative employers punished. The Commission for Social Development should look into that question in preparation for the International Year of the Family (1994). The ILO Committee of Experts should be more demanding of Governments when it considered their reports. Regarding debt bondage, she urged the Governments concerned to follow the example of Pakistan, whose Parliament had adopted a law prohibiting that practice, which affected nearly 10 million persons.

5. On another matter, to speak of a "right to prostitution" meant encouraing the erosion of women's status, exposing millions of children to the worst of fates, impeding the campaign to combat sexual diseases, especially AIDS, and running counter to moral values, which in many societies were a bulwark against the decline in standards of behaviour, the use of drugs and criminality. As the representative of the International Abolitionist Federation had proposed, an additional protocol should be adopted to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which condemned prostitution.

6. Every effort must be made to end sexual tourism, which victimized numerous children and women in the developing countries. Governments, in cooperation with the World Tourism Organization and the International Civil Aviation Organization, should see to it that travel agencies complied with a number of rules and should lay down punishment if they did not. Serious study should also be given to pornography, which gravely endangered moral and family values. Governments should be extremely watchful, for slavery was acquiring new forms. In that connection, she congratulated the Chinese Government, which in 1991 had launched a campaign against the slave trade in women and children.

7. Five years earlier, she had drawn the Sub-Commission's attention to the most serious scandal affecting relations between the rich and poor countries, namely adoption for commercial purposes and the traffic in children for organ removal. Some people claimed that the reports of such practices were lies spread as part of the cold war. However, according to WHO, there was evidence of the existence of that traffic in recent years. The 10 March 1992 issue of the French daily Le Monde reported that in Peru, a certain Patrick Gagel had been arrested for organizing, in slightly over two years, traffic in over 3,000 children. INTERPOL and all the international organizations concerned with children should devote some of their activities to that problem.

8. The societies of the developing countries were also experiencing problems with their children. According to a report on violence towards children published in Germany in 1992, four children committed suicide every day in that country. The survey conducted to establish that report had revealed that among the children questioned, one out of three had thoughts of suicide. Furthermore, according to WHO, by the year 2000, 10 to 15 million children under 10 years of age living in Africa risked losing at least one of their parents. Those children would be easy prey for human rights violators. Among the millions of children who fell victim to violence, especially those who were exploited by the Mafia and gangs, many were in danger of being drawn into the cycle of violence. The international community must do everything it could to help them. But the money to combat poverty, ignorance, injustice and violence was lacking. According to some estimates, some $20 billion would be

needed by the year 2000 in order to finance the objectives set by the World Summit on Children. Yet the rich countries turned a deaf ear and preferred to invest in travel to outer space or Olympic games. Thus, prospects for the future were poor, despite the efforts being made by women and men of good will.

9. Mrs. BRIDEL (International Association of Democratic Jurists) said that her organization was trying to shed light on the sale of children and the sale of organs removed from children, phenomena which it was becoming more and more difficult to deny. In Peru, in March 1992, a major network of traffic in children for organ removal had been uncovered. Shortly thereafter, the media told the world of the dreadful things done in the Montes de Oca psychiatric clinic in Buenos Aires, mainly to children. The Association had also learned of the sale of organs removed from poor people, adults as well as children, in India. Brother Anthony McSweeney had made a statement to the Dublin press on disappearances of children in Latin America and the probability of traffic in the organs of those disappeared children. She noted that in paragraph 38 of document E/CN.4/Sub.2/1990/43, the representative of Mexico had told the Sub-Commission that there were cases of sale of children in his country for commercial ends, including the sale of their organs. She also mentioned a book by Dr. Janice Raymond, to be published in January 1993 by Beacon Press, entitled Reproductive Technologies and Contracts, which included a very long chapter on the traffic in organs removed from children and the obstacles set up to prevent investigation into that question.

10. Mrs. Maïté Pinero, a journalist and writer, had sent the Association a report that had been submitted to the Working Group. In 1986, an article in the Pittsburgh Press had referred to the case of Haitian adults and adolescents from whom a kidney was removed in exchange for the promise of a work contract in the United States or Canada. Since there had been an increasing number of charges, various Latin American Governments had ordered an inquiry to be opened: in Argentina, on the Montes de Oca clinic; in Colombia after a television report made by the French agency Tribulations, which had filmed a little girl whose eyes had been removed; in Honduras and in Guatemala where, curiously, the investigation had led nowhere; in Peru where no one knew what had become of the disappeared children and in Mexico, where, in October 1990, the Population and Development Commission of the Chamber of Deputies had decided to open an inquiry following a statement by Gustavo Barreto Rangel on the traffic in organs. According to Hector Ramirez Cuellar, President of the Health Commission for the Federal District, organs were allegedly being removed from kidnapped children to be transplanted on foreigners. It was in fact in 1990 that the representative of Mexico had made the statement quoted in document E/CN.4/Sub.2/1990/43. The denials that had subsequently been published were far from convincing. It was impossible not to establish a linkage between the scarcity of organs and the sudden "profitability" of children, who were said to be worth $45,000 to $70,000. In conclusion, she recommended an article published by Mrs. Maïté Pinero in the August 1992 issue of the French weekly Le Monde Diplomatique and asked the United Nations to look into that problem through an international inquiry conducted jointly with WHO and INTERPOL.

11. Mrs. DROZ (International Abolitionist Federation) said that her organization's goal was to organize projects for direct aid to women, men and

children who were victims of the traffic in human beings and of sexual exploitation. Thus, it had helped to conduct four work-oriented projects with street children in Taiwan, Nepal, Haiti and Brazil.

12. It also aimed at raising public awareness of abuses and sexual exploitation using the various means of information available to it. Thus it had been conducting a campaign against sexual tourism and child prostitution since 1990 in Asia and Europe. It welcomed the fact that in Germany, anyone found guilty of procuring in a foreign country was liable to a heavy penalty on return. Campaigns had also been conducted in Switzerland and France to alert public opinion to the sexual exploitation of children. Thanks to evidence supplied by the International Committee for the Dignity of the Child, whose headquarters was in Lausanne, Switzerland, a travel agency had been found guilty of procuring and forced to close down. The International Committee had also made a thorough inquiry in Thailand and Burma, which had revealed that young Burmese women were forced to become prostitutes in Thailand and that those who fell seriously ill were simply killed. Contacts had been established by the Thai Ministry for the Status of Women, known for its commitment to the child victims of prostitution. Thus far, 153 Burmese women had been released and were being kept in a safe place until they were repatriated. It should be noted that that large-scale release operation had been conducted by a special action division, and that the local police, which was implicated in the traffic, had not been notified. It had also been learned from a reliable source that children in Thailand were being chained to machines to make fake French shirts. All efforts must be brought to bear at all levels to end such shameful exploitation and the revolting trade in prostitution.

13. Mr. DILLENSEGER (International Abolitionist Federation) stressed the importance of the work of the Working Group on Contemporary Forms of Slavery, in particular the draft programme of action for the prevention of the traffic in persons and exploitation of the prostitution of others. It was particularly urgent for the programme to be implemented in Europe, at a time when borders were to be abolished and the free movement of persons and capital introduced. The associations had to think about several questions: were prostitutes full-fledged citizens or marginalized people? What was their status with regard to the community, legislation and the tax system; the State and the tax system vis-à-vis the Constitution; preventive action against patronage, the cornerstone of prostitution.

14. It must never be forgotten that poverty was the main cause of all contemporary forms of slavery. He asked the Sub-Commission to take the requisite measures for an inquiry to be conducted into the torture and ill-treatment practised in concentration-camp-like establishments such as prisons and hospitals, and in places of sexual pleasure or other places of clandestine activity. He noted the importance of the struggle against tax havens and money laundering and called on ethics committees to condemn expressly the marketing of the human body. In that spirit of struggle against the exploitation of the human body, the associations of the International Abolitionist Federation were organizing a symposium at UNESCO (Paris) on 3 December 1992; the symposium would deal with the following questions: the legislative systems in Europe; unification in view of the new European area; procuring and society; profile of the victims; health and social problems

connected with prostitution; methods of recruitment; the opening of the frontiers; the new parameters in the struggle against procuring; a common platform for prevention at the government, police and association levels. Finally, in view of the increase in the activities of Mafia networks, especially in Europe, mentioning in particular the recent assassinations of judges in Italy, he called on all bodies, associations and private individuals to react: not only the direct victims of such actions, but the very future of democracy were at stake.

15. Mrs. HEISOO SHIN (Commission of the Churches on International Affairs of the World Council of Churches) said she was speaking on behalf of the Korean Council for Women Drafted for Sexual Service by Japan to bring to the attention of the Sub-Commission the question of the 200,000 Korean girls and women who had been forced by the Japanese to act as prostitutes for the Japanese army between 1932 and 1945. Women from other Asian countries were also concerned: Chinese, Taiwanese, Filipinas and Indonesians. Since many military documents had been destroyed and since many of the women in question had either been killed or had died in detention, it was impossible to obtain comprehensive statistics on the scope of that gross violation of human rights. Nevertheless, the Korean Council for Women Drafted for Sexual Service by Japan, set up in 1990, estimated the number of women concerned at 200,000. Even Japan admitted to a figure of 80,000. The Korean Council had conducted research, and the Government of the Republic of Korea had undertaken a nationwide survey on the question. According to the official report by the Government, some 390 women - comfort women and victims of forced labour - had given evidence. Seventy-four of them were still alive; 30 of them had been questioned at length by the Korean Council and had told of their experience. One of them, Mrs. Keum-Joo Hwang, would be in Geneva the following week. Fifty per cent of the women interviewed had been misled by promises of a factory or nursing job; the rest had been abducted by brothel owners. They had been placed at the disposal of Japanese soldiers, not only in Japan and Korea but in all territories occupied by Japan during the war; they were in fact sexual slaves, servicing as many as 100 soldiers per day, and risking torture and even death if they attempted to escape. Most of the survivors still suffered physical or psychological after-effects. Recently-discovered military documents and statements by both Japanese and Korean witnesses proved that the Japanese army had been directly involved in kidnapping those women in order to force them into prostitution. The Japanese army had also been very much involved in setting up and operating brothels; the idea had been to boost the soldiers' morale and to maintain order.

16. In an announcement on 6 July 1992 of the results of its investigation the Japanese Government, had officially acknowledged the responsibility of the Japanese army in that matter, after initially denying it. However, it continued to claim that there was no evidence of forcible recruitment of the comfort women. The Korean Council demanded that the Japanese Government undertake a full investigation into all aspects of the issue, and, based on the result of that investigation, offer reparation as an expression of its sincere regret for those crimes against humanity. The Korean Council also demanded that those facts should be correctly recorded in Japanese school textbooks and that a monument should be erected to the victims' memory. The Government of the Republic of Korea had made the same demands. The Asian Conference on Prostitution was currently being held; the resolution of the

Conference would be available by 12 August. The Korean Council requested the Sub-Commission to adopt a resolution against the sexual slavery imposed on Koreans and other Asian women, in which it would invite the Commission and other concerned United Nations agencies to draw attention to the question, arrange for a team of experts to investigate the question in the Asian countries concerned, instruct the Special Rapporteur to draft a recommendation concerning the compensation of the victims and recommend that the Commission should form a "mediation committee" on the issue of reparation.

17. Mr. ITO (Observer for Japan) speaking in exercise of the right of reply, said, in connection with the issue of the "comfort women" and their situation during the Second World War, that the Japanese Government had ascertained that the Japanese authorities had indeed been implicated in the matter in certain regions and had expressed its apologies to all those women, whatever their nationality or origin, who had suffered on that account. Requests for compensation had been or were being dealt with, in conformity with the San Francisco peace treaty.

18. Mr. VINICIUS PINTA GAMA (Observer for Brazil) said he would like to make some comments on the report of the seventeenth session of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1992/34). The Brazilian Government acknowledged the importance of the Working Group's work and reiterated its willingness to cooperate with the Group. He would like to complement the information given to the Working Group at its previous session, especially with regard to part IV, which dealt with child prostitution and debt bondage. The Special Rapporteur, Mr. Muntharbhorn, in his report on sale of children, child prostitution and child pornography (E/CN.4/1992/55/Add.1), had been able to evaluate the magnitude of the social and economic problems faced by Brazil and their consequences on the efficiency of the administration of justice and law enforcement, which would be effectively resolved by sustainable growth. That was illustrative of the interrelationship between human rights, democracy and development, a possible theme of discussion by the World Conference on Human Rights to be held in 1993 in Vienna. The Special Rapporteur of the Commission on Human Rights had also observed the Brazilian Government's efforts to overcome those problems through a transparent dialogue with all parties concerned, including NGOs and the Catholic Church. Those efforts needed, however, to be supported by further economic and financial cooperation at the international level.

19. His delegation was submitting to the Sub-Commission a document prepared by the Federal Police Department on the measures adopted to fight the phenomena being studied by the Working Group. Several cases of child prostitution and pornography, as well as sale of children, had been reported, which led to the conclusion that those problems were closely linked to demand factors and had transnational implications. Thus they should be given special attention both at the national and international levels.

20. Regarding the allegations of debt bondage and other slavery-linked practices in the Brazilian hinterland, he agreed with the members of the Working Group who acknowledged that those practices tended to occur in social and economic environments of deprivation and extreme poverty, where the necessary structural changes took some time to materialize. The Brazilian Government did not intend to whitewash the situation and was committed at the

highest level to preventing those phenomena and punishing those responsible for violations. But its efforts, which were made within available resources, must be accompanied by measures for reversing structural imbalances, to which end Brazil was seeking new forms of cooperation with the International Labour Organisation and other intergovernmental agencies.

21. Generally speaking, the violence rife in rural areas stemmed from poverty and the agrarian structure. In an attempt to combat such violence, the Council for the Defence of Human Rights had, the previous year, established a special commission on the question of rural violence, entrusted with the task of closely monitoring the situation. It was composed of representatives of several NGOs, rural trade unions, the Catholic Church, the Brazilian Bar Association and business associations. A national programme on the eradication of forced labour, aimed at improving coordination between the competent authorities, had also been drawn up by the Ministry of Labour. Moreover, labour inspection authorities were implementing a plan of action in the regions where complaints of forced labour and debt bondage were the most frequent. However, it was difficult to measure the real dimension of those problems, which tended to occur in areas to which access was difficult. For the biennium 1991-1992, 34 cases of forced labour or debt bondage affecting 7,234 workers had been reported. Investigations had been held and 212 persons charged. In 10 of the 34 cases, allegations of forced labour had not been substantiated, and in 15 others, the inspectors had not found any evidence of forced labour but had concluded that there had been breaches of labour law, in particular excessive deductions from wages for food and lodging which made the workers permanently indebted. In the seven remaining cases, the allegations had been confirmed and 441 workers whom the landowners had prevented from leaving had been released. In two cases, the offenders had immediately been arrested and brought to justice.

22. That information provided demonstrated the Brazilian Government's commitment to eliminating working conditions that were repugnant to the national conscience. Although the number of cases was minimal in comparison with the 62 million workers in Brazil, the Brazilian Government would continue to make all possible efforts to eliminate those abhorrent practices.

23. Miss ATTAH, who had been one of the persons to raise the question of the participation of Muslim women in the Olympic Games when the Sub-Commission had considered the question of the prevention of discrimination and protection of women (agenda item 17 (b)), said she was pleased to announce to the Sub-Commission that an Algerian woman, Mrs. Hassiba Boulmerka, had won the gold medal in the 1,500 metre race.

24. The CHAIRMAN said that the consideration of agenda item 16 would be suspended.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES
(agenda item 10)

(d) THE RIGHT TO A FAIR TRIAL (E/CN.4/Sub.2/1992/24 and Add.1 to 3)

25. Mr. TREAT thanked the Chairman for enabling him to present Mr. Chernichenko's and his report at a time when he could be in Geneva. He

recalled the circumstances in which the report had been prepared: during the cold war, when no two representatives of the super-Powers had ever worked together as he and Mr. Chernichenko had done. That was proof for the Sub-Commission that if it abided by its basic principles and put aside ideological biases, the political considerations, as the report attested, took a back seat to practical problems.

26. Two years earlier, Mr. Chernichenko and he had presented their first brief report (E/CN.4/Sub.2/1990/34), in which they had examined the principal treaties and other international human rights standards guaranteeing the right to a fair trial. The draft initial report, in which they also discussed some aspects of the right to a fair trial which might be made non-derogable, had been discussed in 1990 at the forty-second session of the Sub-Commission. Based on that first brief report, the Sub-Commission had requested Mr. Chernichenko and himself to be appointed special rapporteurs to undertake a full study on the question, and that request had been endorsed by the Commission on Human Rights (decision 1990/108) and later unanimously approved by the Economic and Social Council. The first report on the question (E/CN.4/Sub.2/1991/29) was entitled, "The right to a fair trial: current recognition and measures necessary for its strengthening". It identified new sources of international fair trial norms and discussed the interpretations of those standards by the Human Rights Committee under the International Covenant on Civil and Political Rights. The report also indicated the replies received to the questionnaire distributed in April 1991. Finally, the report suggested additional work to be accomplished in order to prepare a more comprehensive report on the question and recommended ways to strengthen that right, including an international model code.

27. He was grateful to the members of the Sub-Commission for their substantive comments, which were reflected in the second report (E/CN.4/Sub.2/1992/24 and Add. 1 to 3). The second report summarized the discussion of the first report and indicated several revisions to be made in the final report. It recognized additional expressions of international fair trial norms and provided a preliminary analysis of the replies to the questionnaire. The report contained three substantial addenda focusing on the interpretations of fair trial standards by the European Commission and Court of Human Rights and the Inter-American Commission on Human Rights and Inter-American Court of Human Rights, as well as information on amparo, habeas corpus and similar procedures. Finally, the report suggested further work to be done to prepare a more comprehensive report on the right to a fair trial and to recommend ways to strengthen that right.

28. Addendum 1 to the report, which dealt with the interpretation by the European Commission and European Court of Human Rights of international fair trial standards, discussed the application of fair trial standards to "civil rights and obligations". The various sections of the document dealt with the rights to be informed promptly of charges, to be tried within a reasonable time and the right, to defence counsel, adequate time and facilities for the defence, an interpreter, an independent and partial tribunal, witnesses, the presumption of innocence, public hearing, fair hearing and public pronouncement of the judgement.

29. Addendum 1 also summarized the interpretations of the European Commission and Court of Human Rights in various decisions concerning fair trial provisions in the European Convention for the Protection of Human Rights and Fundamental Freedoms. It should be noted that that addendum focused almost exclusively on interpretations under article 6 of the European Convention, although there were several other provisions, such as articles 3, 5, 7 and 8, as well as Protocol No.7, that were relevant. Article 6 (1) of the European Convention, for example, provided that everyone was entitled to a hearing within a "reasonable time". The determination of reasonable time, for the European Court and Commission, related to the particular circumstances in every case. In any event a State must be able to guarantee "reasonable time" even during a disruption of State institutions or political crisis. In one case, the European Court had found that a time period of 3 years and 10 months could not be considered as reasonable time. Even exceptional difficulties encountered by a Government could not be used to deprive an applicant of his or her entitlement to a judicial determination within a "reasonable time".

30. Addendum 2 to the report focused on the interpretation of international fair trial standards by the Inter-American Commission on Human Rights and Inter-American Court of Human Rights concerning the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man. The addendum provided summaries of several cases in which the Inter-American Commission had resolved that the right to a fair trial had been violated. The interpretation given by the Inter-American Commission and Court of the right to a fair trial was examined with respect to 10 points: (a) arrest and detention; (b) treatment during pre-trial detention and imprisonment; (c) right to notice; (d) right to release pending trial; (e) right to counsel; (f) hearing; (g) decisions; (h) appeal; (i) remedies and (j) possible derogations. At its forty-second and forty-third sessions, the Sub-Commission had suggested that the right to petition for habeas corpus or amparo should be made non-derogable, even during periods of emergency. The Human Rights Committee had also made a similar recommendation. As a result, Addendum 3 to the report dealt with amparo and habeas corpus, the sources of international amparo/habeas corpus norms and the issue of derogability. Amparo was a remedy used in the Latin American countries to enable a claimant to seek protection from governmental infringement of rights and duties, while habeas corpus was a remedy used to challenge the lawfulness of detention. Although many constitutions provided for a habeas corpus right, it was often suspended under states of emergency. However, as the Inter-American Commission on Human Rights had stated, it was precisely under such circumstances that it acquired its greatest importance. It was therefore essential that the right to habeas corpus should be seen as a right from which no derogation was permitted, in order for it to be an effective remedy to protect other rights not open to derogation. At its eleventh session in March 1992, the African Commission on Human and People's Rights had adopted a resolution on the right to recourse procedures and fair trial, which would be helpful in the elaboration of a more comprehensive fair trial standard in the United Nations.

31. In their next report, the two Special Rapporteurs would focus on national practices related to the right to a fair trial, based on analysis of the replies to the questionnaire that had been distributed to Governments,

specialized agencies and non-governmental organizations and the views expressed by the Human Rights Committee in reviewing reports by States parties to the International Covenant on Civil and Political Rights.

32. On behalf of Mr. Chernichenko and himself, he thanked the members of the Sub-Commission and Secretariat who had helped them at all levels and enabled them to fulfil their task. Needless to say, they would both be very interested in hearing the comments and suggestions of the Sub-Commission on their work. They hoped to continue to receive the Sub-Commission's cooperation and support in preparing the report they would be submitting to its forty-fifth session. He was proud to have been a member of the Sub-Commission and was certainly not among those who wanted that body to be eliminated, as some had advocated at a certain time.

33. Mr. CHERNICHENKO, as co-author of the report introduced by Mr. Treat, stressed that the task of the two Rapporteurs had not been easy but that the material and technical difficulties with which they had had to cope, since they were not in the same hemisphere, had nevertheless not prevented them from working together and fulfilling their mission. He might have occasion to make a few additional comments on the report when the Sub-Commission discussed its substantive aspects.

34. The CHAIRMAN expressed appreciation to Mr. Chernichenko for deferring his observations and thanked Mr. Treat for his oral introduction of the report.

ELIMINATION OF RACIAL DISCRIMINATION:

(a) MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION

(b) ADVERSE CONSEQUENCES FOR THE ENJOYMENT OF HUMAN RIGHTS OF POLITICAL, MILITARY, ECONOMIC AND OTHER FORMS OF ASSISTANCE GIVEN TO THE RACIST AND COLONIALIST REGIME OF SOUTH AFRICA

(agenda item 5) (E/CN.4/Sub.2/1992/11; E/CN.4/Sub.2/1992/NGO/1; E/CN.4/Sub.2/1992/12 and Add.1; E/CN.4/1992/8)

35. Mr. CISSE (Secretariat), introducing agenda item 5, noted that the Sub-Commission considered that item at each of its sessions. With respect to agenda item 5 (a), the Sub-Commission might wish to note that pursuant to the recommendation made by the Commission on Human Rights at its last session, the Economic and Social Council had on 30 July 1992 adopted resolution 1992/13, in which it recommended that the General Assembly should proclaim in 1993 a third decade to combat racism and racial discrimination. For the consideration of that item, the Sub-Commission had before it the report which it had requested the Secretary-General to prepare in its resolution 1991/2. The report bore the symbol E/CN.4/Sub.2/1992/11 and contained an overview of current trends of racism, discrimination, intolerance and xenophobia affecting indigenous peoples, migrant workers and other vulnerable groups of society, the occurrence in all countries of serious incidents attributable to racism, racial discrimination and xenophobia, and measures taken by Governments to combat those phenomena and the effects of such measures. Under

agenda item 5 (b), the Sub-Commission had before it the updated report prepared by Mr. Ahmed Khalifa on the question (E/CN.4/Sub.2/1992/12 and Add.1).

36. Mr. KHALIFA, introducing his report under agenda item 5 (b) (E/CN.4/Sub.2/1992/12 and Add.1), noted that it contained a new chapter II on the effects of sanctions in South Africa. He wished first of all, to express his appreciation to the Under-Secretary-General for Human Rights and the Secretariat for giving him all the help he needed to perform his task, especially by providing him with the services of an economic adviser to prepare that chapter.

37. The comprehensive list, updated every year, which had deeply disturbed certain international companies, even raising some feelings of guilt, had certainly played a part in the way of the situation in South Africa had developed. Despite all the efforts of the South African Government to resist the sanctions, they had certainly been effective and had made a considerable contribution to the economic problems with which South Africa had been struggling for several years. The situation had remained so critical that the country had more than once found itself with reserves equivalent to only six weeks' imports. Those difficulties, as well as the fall of communism, which South Africa could no longer use as a pretext for obtaining support from the Western countries, had finally unleashed the process of change that had begun in that country. However, Mr. De Klerk's statements of intent had been given a good deal more weight than they deserved, for they were in fact aimed only at calming the international community's fears. Since the referendum of 17 March 1992, concerted efforts had even been made, through certain media, to paint an idyllic picture of the situation in South Africa in order to diminish negative feelings towards the country and the pressure it was under. In a few months, South Africa had succeeded in being readmitted to the community of nations in all areas, including athletics, since South Africans had taken part in the Barcelona Olympic Games, and in a sense everyone was back to square one, for apartheid was far from over. It was true that the apartheid laws, in particular the Land Act, had been repealed, but 89 per cent of the land was still in the hands of 30 per cent of the population, i.e. the white minority. Black people still did not have the means to buy land or access to education or jobs, and above all, they still did not have the right to vote, which was their only way of obtaining change. The Government had not yet tackled the basic question of equality and the fair distribution of the nation's wealth. In the meantime, its representatives were making every effort to highlight the role South Africa could play in the rest of Africa and the aid it could provide neighbouring countries; thus many African countries had lost no time in sending delegations to South Africa, although it was obvious that South Africa would be far too busy with its own problems to be able to help them; its growth rate was nearly zero, and 30 per cent of its active population was unemployed.

38. If most of the African States had already established contacts with South Africa, it was not surprising that the Western countries, especially the

European countries, had done the same. Since the decision by Great Britain, the day after President De Klerk's statement of 2 February 1990, to lift the sanctions imposed on South Africa since 1986, the entire structure of sanctions had crumbled, and in December 1990 the European Community had even lifted the prohibition against new investments in that country. The United States had very quickly followed suit, and uncertainties and hesitations were even beginning to be visible within certain United Nations bodies. It was true that the United Nations Centre on Transnational Corporations continued to publish a list of companies with interests in South Africa, the most recent of which was contained in document E/C.10/1992/7 and had been considered by the Commission on Transnational Corporations at its most recent session, in April 1992, but, because of the restructuring of United Nations services, the United Nations Centre against Apartheid and the United Nations Centre on Transnational Corporations, which until recently had been headed by Under-Secretaries-General, were now being directed by officials of lower rank. Fortunately, the mandate of the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa had not yet been ended; that Group had done very useful work which it would be a pity to bring to an end. But it was clear that certain United Nations bodies were sending South Africa encouraging signals that were not in keeping with the actual situation in the country or the demands of the ANC leaders, who had never stopped urging the world community to maintain economic sanctions. The sanctions should only be lifted gradually, depending on the progress achieved. Moreover, that was what had been advocated by the Heads of Government of Commonwealth Countries, who had met at Harare in October 1991, in a press release in which they linked any change in the application of sanctions against South Africa to the adoption of concrete and effective measures to dismantle apartheid, namely the installation of an interim Government, the elaboration of a new democratic constitution and the holding of elections based on that constitution. Paradoxically, the international community was softening its position towards South Africa and relaxing its pressure at a time when South Africa was having to deal with an unprecedented wave of violence. According to the peace agreement signed in September 1991 by the South African authorities, the ANC and the Inkatha Party, the political parties and organizations were to work together to bring an end to the violence in the country, but the South African Government had shown itself to be incapable of doing so. In actual fact it had not really been willing.

39. In Boipatong, in June 1992, 46 persons had been killed with spears or shot to death, and everyone knew that spears were the traditional weapons of the Zulus. Public opinion was convinced that the police had escorted the attackers (members of Inkatha) into and out of Boipatong, but no investigation had immediately been ordered to confirm or invalidate that belief, or to look into who was responsible for the massacre, which had led the ANC to withdraw from the negotiating table. A few days later, Mr. De Klerk had implied that there might be a return to the state of emergency, lifted two years earlier in a gesture of reconciliation. In any event, without speaking of governmental complicity, it had to be acknowledged that the average member of the police force acted with one idea in mind: the purpose of the security system was to

preserve the status quo, i.e. a white South Africa by all means possible, including ill-treatment and action by death squads; the police would not change its behaviour unless it was forced to do so. It had become completely ungovernable, and it should be placed under a multiparty authority and an international United Nations force entrusted with overseeing its operations. The Government should dismantle the special forces of all kinds, repeal the repressive legislation, prosecute all the members of the police implicated in the violence and prohibit the carrying of dangerous weapons, including traditional weapons. Unfortunately, it did not really want to deal seriously with that question. In view of the situation, he wondered whether international pressure could really be considered as no longer necessary. On the contrary, in his view, relaxing the pressure was tantamount to breaking off the process of elimination of apartheid: the negotiations, already sluggish, would become completely blocked, after dragging on for months, indeed years, and apartheid would be restored. Yet South Africa would not extricate itself so easily; its economy would collapse and the violence would spread and spill over into the white neighbourhoods; the quality of life enjoyed by white South Africans would also deteriorate. The negotiations might in fact be no more than a smokescreen to hide the real objective - the preservation of apartheid. And yet there had never been any question of waiting for racism to disappear completely in order to lift the sanctions against South Africa; at the current stage, it would be sufficient to establish constitutional mechanisms that would make it possible to eliminte racial discrimination sanctioned by law. Practically speaking, it had to be acknowledged that progress would certainly take a long time. But South Africa had to realize that if it went backwards, so would the international community. Until Mr. De Klerk gave the black majority the right to vote, he would have no chance of seeing peace reign inside the country and winning the esteem of the rest of the world. But did he want to do so? The fact that the visa applications for him, made officially to Mr. De Klerk by the Secretary General and the Under-Secretary-General, had gone unanswered, shed some doubt on th· Yet it had been stated officially that his mission would not at all be in he nature of an inspection.

40. As for the list of banks, companies and other bodies granting assistance to the colonialist regime of South Africa, which Mr. Khalifa had been updating for so many years, since sanctions were no longer being strictly applied, the list no longer had any purpose. If an end to apartheid was truly desired, other means must now be used. Thus, he asked to be relieved of his mandate. In his view, there were only two ways left to end apartheid, negotiation or brute force. South Africa was already on the brink of physical confrontation, which would be terrible. Yet he still hoped that it would be possible to spare everyone that prospect and that the end of apartheid, which was in any case inevitable, would be the result of the unceasing pressure brought to bear by 25 million black people and of their will and their fighting spirit. With the support of the rest of the world, South Africa, which was more black than white, could become a beautiful, harmonious and prosperous country.

41. Mr. Chernichenko took the Chair.

42. Miss ATTAH joined Mr. Khalifa condemning the haste with which economic relations with South Africa had resumed, while apartheid was still rife. She reviewed the reasons that had caused the international community to be optimistic: the signing in September 1991 of the national peace accord with the ANC, the Inkatha and other leading political groups, the convening in December 1991 of the Convention for a Democratic South Africa (CODESA) and the referendum of 17 March 1992 in which the white electorate had given Mr. De Klerk a mandate to negotiate with other groups a new political dispensation of the Republic. Unfortunately, optimism had given way to unease, for the controlling grip of apartheid on South Africa had once again become manifest. The Government's insistence on a system of compulsory coalition Government that would give minority parties, no matter how small, a share in government as well as a veto over all legislation, negated the very essence of normal democracy. It was clear that the white minority, having been nourished by the gains of apartheid, was now unwilling to come to terms with the reality of a black-dominated Parliament and Government. Thus both blacks and whites were in need of deliverance from the yoke of apartheid. Whites must realize that black South Africans were fully capable of enjoying all the rights of man and respecting those rights in others. To those who blamed the ANC and Inkatha for the violence, such as that at Crossroads and Boipatong, she would say that only the National Party regime of Mr. De Klerk had the power to curb the violence, and that the death squads, responsible for the deaths of at least 4,800 blacks in the past two years, were in fact an instrument of destabilization in the hands of the Government of the white minority. Given the provocation of the neo-Nazi and ultra-rightist groups, one could not but sympathize with those who accused the Government of complicity with the death squads. Was Mr. Mandela not right in stating that he could no longer explain to his people why his movement was continuing to talk to a regime that was murdering black people? The South African Government did appear to be waging a campaign of destabilization by allowing the collapse of effective policing as part of a grand design to perpetrate township violence which would be used as an excuse for abandoning the ideal of a multi-racial South Africa. There were many indications - threats to reintroduce the state of emergency, growing fascist movements, white and black, the collapse of the CODESA talks and series of pro-democracy demonstrations, two-day strikes by black South Africans, etc. - that what lay in store for the Republic might well be a painful and protracted confrontation between white and black nationalism.

43. Having scored significant successes in the struggle for the total abolition of apartheid in South Africa, the international community should not allow anything to derail the programme for a multi-racial democracy in South Africa. In fact, the last OAU meeting in Dakar, Senegal, had not only denounced the Pretoria Government for fuelling township violence, but also called on the United Nations Security Council to meet to examine the issue of violence in South Africa and to take all appropriate action to end it. The

world community must refrain from continued rejection of international involvement as a way of checking the crisis in South Africa and help the parties to return to the negotiating table, play a more permanent role in facilitating the peace process and help the South African Government to overcome its tendency to take definitive negotiating positions, such as the one on veto power for a specially constituted senate, which gave the impression that, even if relegated to the background, apartheid would still prevail. There was also a need for an enabling environment that would foster the transition programme. The South African Government had the means to quell the violence; if Mr. De Klerk had the will to do so, he needed to disband all security force units notorious for their brutality, ban the carrying of dangerous weapons in public, abolish the all-male hostel system which had become new focal points of violence, and undertake to resume the CODESA talks in a spirit of sincere give-and-take and with respect for democratic norms. Sanctions must continue to be maintained until an interim Government had been established and black South Africans exercised their right to vote. In conclusion, she urged Mr. Khalifa not to ask to be relieved of his mandate until he had given the matter further thought.

The meeting rose at 1 p.m.